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*NOT ADMITTED IN VA

March 27, 2012

FILED VIA ECFS

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W., Room TW-B204
Washington, D.C. 20554

Re: *Ex Parte* Notification
WC Docket Nos. 11-42; 10-90; 05-337; and 03-109;
CC Docket No. 96-45; WT Docket No. 10-208

Madam Secretary:

In accordance with Section 1.1206 of the Commission's Rules, 47 C.F.R. § 1.1206, we hereby provide you with notice of an *ex parte* presentation made in connection with the above-captioned proceedings.

On Friday, March 23, 2012, David LaFuria, Todd Lantor and the undersigned, counsel to Cellular South, Inc. d/b/a C Spire Wireless, United States Cellular Corporation, Smith Bagley, Inc., Allied Wireless Communications Corporation and Georgia RSA #8 Partnership met with Trent Harkrader, Amy Bender, Alex Minard, Ted Burmeister (by telephone) and Michele Berlove (by telephone) of the Telecommunications Access Policy Division, Wireline Competition Bureau, and Erik Salovaara of the Wireless Bureau. We discussed two matters: (1) T-Mobile USA, Inc.'s ("T-Mobile") Petition for Reconsideration or Clarification ("Petition for Reconsideration") of the Commission's *USF/ICC Transformation Order*, and (2) the Petition for Waiver filed by USTA, *et al.* seeking a delay in the reduction of the Lifeline subsidy and in the elimination of the Link Up subsidy, as set forth the Commission's *Lifeline Reform Order*.

In its Petition for Reconsideration, T-Mobile sought: (1) to have the 2011 baseline amount calculated based on annualized 2011 support, not total 2011 support; and (2) to have the 2011 baseline amount retroactively calculated based on the amount that the carrier would have received in 2011 had it been an ETC for all of 2011 in cases where a carrier filed for ETC status

before the Commission adopted the *USF/ICC Transformation Order*, regardless of when ETC status is ultimately granted.

We urged the Commission to deny T-Mobile's Petition for Reconsideration for the following reasons:

- Grant of the Petition would directly contravene the Commission's overarching policy objective of reducing legacy USF support payments. In particular, we noted that in uncapped states (e.g., Arizona, Hawaii, Louisiana and Oregon) any additional support to T-Mobile would necessitate increased funding from the USF pool.
- Contrary to T-Mobile's arguments, revised Section 54.307(e)(1) is fully consistent with the intent and text of the *USF/ICC Transformation Order*, which states in relevant part as follows:

We conclude that each competitive ETC's baseline support amount will be equal to its total 2011 support in a given study area.... Using a full calendar year of support to set the baseline will provide a reasonable approximation of the amount that competitive ETCs would currently expect to receive, absent reform.¹

There is no way to conclude from that rule and the Order's text that the Commission's statements are either unclear or inconsistent. The baseline going forward was set at total 2011 support.

- T-Mobile, like all affected carriers, had more than adequate notice of the Commission's final action.
- The support that T-Mobile seeks to collect is for prior investment, made perhaps many years ago by T-Mobile, without a penny of high-cost support.

¹ *Connect America Fund*, WC Docket No. 10-90, *A National Broadband Plan for Our Future*, GN Docket No. 09-51, *Establishing Just and Reasonable Rates for Local Exchange Carriers*, WC Docket No. 07-135, *High-Cost Universal Service Support*, WC Docket No. 05-337, *Developing an Unified Intercarrier Compensation Regime*, CC Docket No. 01-92, *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, *Lifeline and Link-Up*, WC Docket No. 03-109, *Universal Service Reform – Mobility Fund*, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161, 2011 WL 5844975 (rel. Nov. 18, 2011), 76 Fed. Reg. 73830 (Nov. 29, 2011), 76 Fed. Reg. 78384 (Dec. 16, 2011), 76 Fed. Reg. 81562 (Dec. 28, 2011) ("*USF-ICC Transformation Order*"), *recon.*, FCC 11-189 (rel. Dec. 23, 2011) at ¶ 515 (emphasis added).

- The Commission has already determined that T-Mobile does not need any high-cost support to maintain its existing service. In the *USF/ICC Transformation Order*, the Commission noted that:

...there is nothing ... in the record that suggests AT&T or T-Mobile would reduce coverage or shut down towers in the absence of ETC support. We therefore find that it is reasonable to assume that the four national carriers will maintain at least their existing coverage footprints even if the support they receive today is phased out.²

- T-Mobile cannot reasonably blame delays in obtaining ETC status on regulatory delay or obstruction by other parties. T-Mobile had over a decade to seek ETC designation. Further, in multiple state proceedings where T-Mobile has sought ETC designation, any significant delay was due largely (and in some cases, solely) to T-Mobile's own failure to prosecute its pending ETC applications. For example, in Oregon, the PUC found that T-Mobile made no substantive filings or requests for action in the six months prior to January 2012. In response to the PUC's findings, on January 27, 2012, T-Mobile filed a letter requesting until February 29, 2012 to file a status update. On February 29, 2012, T-Mobile filed another letter, noting that it is currently evaluating the FCC's Lifeline Reform Order, and that it plans to file an amended application within 30 days.³
- In order for T-Mobile to have its ETC designation in Georgia deemed effective prior to December 31, 2011, T-Mobile would, at a minimum, need the Commission to grant it a waiver of Section 54.314(d)(6) of the FCC's Rules, which requires that state PUC high-cost certifications be filed within 60 days of the newly-designated ETC's designation date. The Commission has, on multiple occasions, denied similar waiver requests.⁴

In addition, during the meeting we briefly noted our support for the USTA *et al.* waiver request which seeks a delay in implementation of the effective date of the flat rate reimbursement amount for Lifeline support, provided that the waiver is applicable to all Lifeline service providers and not just those providing "postpaid" Lifeline service. We noted that the very same concerns that warrant grant of the waiver apply with equal force to all Lifeline service providers.

² *USF-ICC Transformation Order* at ¶ 495.

³ T-Mobile West Corporation, Application for Designation as an Eligible Telecommunications Carrier, Docket No. UM 1511, Public Utilities Commission of Oregon.

⁴ See *Allied Wireless Communications Corporation Petition for Waiver*, 26 FCC Rcd 5233 (Wireline Comp. Bur. 2011), and *Centennial USVI Operations Corp. Petition for Waiver*, 24 FCC Rcd 4821 (Wireline Comp. Bur. 2009).

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If you have any questions or require any additional information, please contact undersigned counsel directly.

Respectfully submitted,

A handwritten signature in black ink that reads "Robert S. Koppel". The signature is written in a cursive, slightly slanted style.

Robert S. Koppel

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United States Cellular Corporation, Smith Bagley, Inc., Al-
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cc: Trent Harkrader
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